84-1885 (1)

Office - Supreme Court, U.S.
FILED
MAY 31 1985
ALEXANDER L. STEVAS.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

No._____

HENRY HERIER-DARCHERIEL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ARTHUR MABRY and
JOSEPH F. WALSH
Attorneys at Law
2975 Wilshire Blvd.,
Suite 604
Los Angeles, Ca 90010
(213) 383-2186

Attorneys for Petitioner, HENRY HERIER-DARCHERIEL

42pp

QUESTIONS PRESENTED FOR REVIEW

I

WHETHER PETITIONER WAS AFFORDED DUE PROCESS DURING THE DEPORTATION PROCEEDINGS?

II

WHETHER THE GOVERNMENT SHOULD BE ALLOWED TO PROCEED AGAINST PETITIONER TKROUGH THE USE OF AN OMISSION WHICH THE GOVERNMENT CREATED?

III

DID THE NINTH CIRCUIT COURT DEPRIVE PETITIONER OF HIS RIGHT OF REVIEW BY FAILING TO CONSIDER OR DETERMINE THE FOREGOING QUESTION NO. II, WHICH WAS RAISED ON APPEAL, YET SAID COURT STATED THAT THE ONLY ISSUE RAISED ON APPEAL WAS AS TO DUE PROCESS AND MADE ITS DETERMINATION SOLELY ON THAT ISSUE?

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

No._____

HENRY HERIER-DARCHERIEL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PARTIES TO THESE PROCEEDINGS

TABLE OF CONTENTS

	Page
Table of Authorities	iv
Order Below	1
Jurisdiction	2
Constitutional, Statutory and Regulatory Provisions Involved	2
Statement of the Case	4
Reasons for Granting Writ	5
Conclusion	14
Certificate of Service	16
Appendices	17
A-1...Opinion of Court of Appeals	
A-2...Transcript of Hearing	
A-3...Application for Waiver of Excludability	
A-4...Waiver of Excludability	

TABLE OF AUTHORITIES

Cases	Page
AQUILERA ENRIQUEZ vs. I & N SERVICE, 516 F.2d 565	7
BOLANOS vs. KILEY, 509 F. 2d 1023	8
Code of Federal Regulations	
8 C.F.R., Section 242.17(a)	2,6

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

No._____

HENRY HERIER-DARCHERIEL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment and order of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled cause on May 9, 1985.

ORDER BELOW

The order of the Court of Appeals

for the Ninth Circuit appears in the Appendix A-1 hereto. No order has been rendered by the District Court for the Central District subsequent to the order of the Court of Appeals.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on May 9, 1985. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C., Section 1254(1).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Constitution of the United States, Fifth Amendment: "Nor shall any person.. be deprived of life, liberty or property without due process of law."

8 C.F.R., Section 242.17(a)..The respon- may apply to the special inquiry officer for suspension of deportation under section 244(a) of the Act, for adjustment

of status under section 245 of the Act, or under section 1 of the Act of November 2, 1966..or for creation of a record of lawful admission for permanent residence under section 214(d) or 249 of the Act; such application shall be subject to the requirement contained in Parts 244, 245 and 249 of this Chapter. In conjunction withi such applications, if respondent is inadmissible under any provision of section 212(a) of the Act and believes he meets the eligibility requirements for a waiver of the ground of inadmissibility, he may apply to the special inquiry officer for such waiver. The special inquiry officer shall inform the respondent of his apparent eligibility to apply for any benefits enumerated in this paragraph and shall afford him an opportunity to make application thereduring the hearing. (Emphasis Added)

(b) Voluntary Departure: The respondent may apply to the special inquiry officer for voluntary departure in lieu of deportation pursuant to Section 244(e) of the Act.....

STATEMENT OF THE CASE

In an Indictment filed in the United States District Court for the Central District of California, petitioner was charged in a One Count Indictment with violation of 8 U.S.C., Section 1326: Deported Alien found in the United States.

On November 15, 1983, the case was submitted to the Court on an agreed statement of facts, and on said date, the Court found petitioner guilty as charged.

Petitioner was committed to the custody of the Attorney General for imprisonment for a period of two (2) years; peti-

tioner was further ordered to pay a fine of $1000.00 to the United States.

Notice of appeal was timely filed.

Petitioner is presently on bond pending appeal and is residing in Los Angeles, California.

REASONS FOR GRANTING WRIT

I

PETITIONER WAS NOT AFFORDED DUE PROCESS DURING HIS DEPORTATION PROCEEDINGS.

At the deportation hearing held on December 6, 1971, petitioner appeared before the special inquiry officer without counsel. Reference is hereby made to the Transcript of those proceedings which is attached hereto marked A-2 and by reference made a part hereof.

Although petitioner said 'I'll go ahead without a lawyer', there is nothing is said transcript to show that he

made a knowing waiver of his right to counsel.

Said transcript further shows that the hearing officer was presented with a certified copy of petitioner's marriage certificate along with a Notice dated September 14, 1971, advising that a visa petition filed by petitioner's American born wife in his behalf had been approved on said date.

Such information does entitle petitioner to a suspension of deportation, along with other available benefits.

8 C.F.R., Section 242.17(a) makes it mandatory when it states: "The special inquiry officer shall inform respondent of his apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford him an opportunity to make application therefor during the hearing. (Emphasis Added)

The only benefit advised by the special inquiry officer to petitioner was the relief afforded him by voluntary departure. In said transcript, the hearing officer told petitioner the following: "the only relief that will be available to you in this proceeding would be to give you permission to depart voluntarily." (Emphasis added)

Advising petitioner that such was the only relief available was clearly incorrect. Such lack of due process and the deportation order of 1971, which followed therefrom, and which order later became the grounds for the indictment herein was certainly prejudicial to this petitioner.

AQUILERA ENRIQUEZ vs. I & N SERVICE, 516 F.2d 565: If procedure mandated by Congress does not provide an alien with procedural due process, they must yield.

BOLANOS vs. KILEY, 509 F.2d 1023: alien must be afforded due process protection during deportation process.

At page 6 of 'Appellant's Opening Brief', the following is stated:"During the course of the said hearing, it was shown and without dispute that appellant on said hearing date was married to an American citizen; it was further shown that appellant, as beneficiary of an I-130 Petition filed by his wife, received approval dated September 14, 1971. In spite of such knowledge aforementioned, the hearing officer proceeded with the said hearing."

III

THE NINTH CIRCUIT COURT DEPRIVED PETITIONER OF HIS RIGHT OF REVIEW BY FAILING TO CONSIDER OR DETERMINE QUESTION NO. II WHICH WAS RAISED ON APPEAL; SAID COURT STATED THAT THE

ONLY ISSUE RAISED ON APPEAL WAS THAT REGARDING DUE PROCESS AND MADE ITS FINDINGS AND DETERMINATION SOLELY ON THAT ISSUE.

At page 7 of the Court's Opinion, the Court made the following mistaken statement:

"Appellant does not otherwise challenge the IND's authority to deport him in 1979 by reason of the 1971 deportation order. Nor does he suggest that the 1975 permission to reapply made it unnecessary for him to obtain permission to reenter after his 1979 deportation. Therefore, the only issue is whether the 1971 deportation hearing violated appellant's due process rights."

Thereafter, the Court made findings relating only to the issue of due process and as to lack of prejudice raised by the Government and concluded as follows:

"Appellant was not deprived of any due process rights and he suffered no prejudice from the Special Inquiry Officer's failure to inform him of his rights under the Immigration laws. AFFIRMED."

The aforesaid excerpt from the Court's Opinion does not deny that the Special Inquiry Officer failed to inform petitioner of his rights under the Immigration laws, but only asserts that such failures did not prejudice petitioner.

By reason of the failures on the part of the Special Inquiry Officer, petitioner, at said 1971 hearing, was ordered deported and was subsequently charged in the Central District and found guilty of the charge. Therefore, petitioner was clearly prejudiced.

By reason of the Ninth Circuit Court's failing to consider or

determine Question No. II, which was raised on appeal, petitioner was deprived of his Constitutional right of Appeal by the Court's not granting a full review of a material issue raised by the appeal.

As evidence of such an issue having been raised by petitioner, there is at page 2 of his Opening Brief the following: "Statement of Issues Presented for Review". Following that is No. II, which states: "WHETHER THE GOVERNMENT SHOULD BE ALLOWED TO PROCEED AGAINST APPELLANT THROUGH THE USE OF AN OMISSION WHICH THE GOVERNMENT, NO DOUBT, CREATED?"

That said question is answered in the affirmative at page 5 of said Opening Brief, followed at page 7 by Argument on that said issue.

The following condensed version of said Argument on Appeal is herein made:

II

THE GOVERNMENT SHOULD NOT BE ALLOWED TO PROCEED AGAINST PETITIONER THROUGH THE USE OF AN OMISSION WHICH THE GOVERNMENT CREATED.

On December 6, 1971, a decision concluding deportability of petitioner was filed. However, petitioner was granted voluntary departure. Said decision subsequently became the basis for the arrest and indictment of petitioner for violation of 8 U.S.C., Section 1326: Deported alien found in the United States.

After the said decision, petitioner, at various times applied to I & N Service for benefits.

On November 15, 1972, petitioner signed a Form I-604: Application for Waiver of Grounds of Excludability. A copy of said form is attached hereto marked A-3 and by reference made a part

hereof. In its original state, the said form was completely handwritten, except as to blocks 7 and 8 which were typed. Block 8 shows dates of deportation as being: 12/29/62, 7/19/63 and 7/28/67. Whoever typed the information into the from failed to list the further deportation date of 12/6/71. Said form was received by the I & N Service at Canada on 3/21/74. Thereafter, in response to said application on 6/16/75, a Waiver of Excludability on Form I-607 was granted. A copy of said form is attached hereto marked A-4 and by reference made a part hereof.

On A-3, in petitioner's Application for Waiver, there was listed only one conviction which occurred on 12/20/62. However, on A-4 where petitioner was granted the Waiver, there was inserted by the department several other convic-

tions followed by a statement as to a known arrest. Yet the Service only listed on A-4 the deportations for 12/29/62, 7/19/63 and 7/28/67 although the Service knew or had reason to know that there was the 12/6/71 deportation which was not listed. There is no more reason why the Service can seek and add to the convictions and even arrest which petitioner had failed to list on his Application than why it could not seek and add to the correct number of deportations. The Government thereupon perpetuated the mistake. Therefore, the Government should not now be allowed to strike at the unwary petitioner who was himself misled by the Government into believing that all of his deportations had finally been waived.

CONCLUSION

By reason of the premises, a Writ of

Certiorari must issue to review the judgment and opinion to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

ARTHUR MABRY & JOSEPH F. WALSH, Attorneys for Petitioner, Henry Herier-Darcheriel

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No._____

HENRY HERIER-DARCHERIEL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of May, 1985, a copy of the Petition for Writ of Certiorari to United States Court of Appeals was mailed, postage prepaid, special delivery, to the Solicitor General of the United States, Department of Justice, Washington, D. C., 20530, counsel for respondent.

By: ARTHUR MABRY & JOSEPH F. WALSH, Attorneys for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT Filed: 5/9/85

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. HENRY HERIER-DARCHERIEL, Defendant-Appellant.	CA No. 84-5004 DC No. CR 83-0748-CHH MEMORANDUM

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, Cynthia H. Hall, District Judge, Presiding Argued & Submitted 3/7/85

Before: BARNES & REINHARDT, Circuit Judges and SOLOMON, District Judge.

Henry Herier-Darcheriel (appellant) appeals his conviction for being an alien found in the United States after deportation, in violation of 8 U.S.C., 1326 (1982). Appellant contends that he was deprived of due process when the Special Inquiry

Officer failed to inform him of his rights under the immigration laws during the deportation hearing.

We affirm the conviction.

Facts

Appellant is a citizen of Panama. In 1962, he was convicted of second-degree burglary in California, and he was deported. In 1963, he was convicted of illegal re-entry into the U.S., and he was again deported.

In 1966, appellant was convicted of burglary and confined in a California state prison. Upon his release in 1967, he was deported, and he again re-entered the United States illegally.

On November 3, 1970, while he was in the United States illegally, appellant married a U. S. citizen. Appellant's wife filed with the Immigration and Naturalization Service (INS) a "Petition to clas-

sify Status of Alien Relative for Issuance of Immigrant Visa." In September, 1971, the INS approved the petition. Appellant applied for an immigrant visa so he could be admitted into the U.S. as a permanent resident alien.

The INS served appellant with an Order to Show Cause which charged that appellant was deportable because in 1967 he entered the United States without permission from the Attorney General to reapply for admission after the 1967 deportation.

In December, 1971, at the deportation hearing on the Order to Show Cause, the Special Inquiry Officer informed appellant of his right to counsel, to present evidence, and to question witnesses. Appellant waived his right to counsel.

He was also informed that if he was found deportable, his only available alter-

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

native to deportation would be voluntary departure. Appellant requested voluntary departure.

The Special Inquiry Officer found appellant to be deportable and directed him to voluntarily leave the United States on or before February 6, 1972. The special inquiry officer urged appellant to pursue his application for an immigrant visa and to immigrate lawfully.

Appellant did not leave the country. Instead, in May, 1972, he applied for permission to reapply for admission into the United States after deportation and liste 1962 as his only date of deportation.

In August, 1972, the INS placed appellant under an order of supervision which required appellant to regularly report to the INS. The INS made no effort to enforce the 1971 deportation order because appellant was supporting his wife and child

and because appellant was eligible for a waiver of excludability. The waiver would make appellant eligible for an immigrant visa despite his previous convictions and deportations.

In November, 1972, when appellant applied for a waiver of excludability, he listed his 1962 burglary conviction and his 1962, 1962 and 1967 deportations but not the 1971 deportation order.

On June 16, 1975, the INS issued an order which waived both of appellant's burglary convictions and approved appellant's application for permission to reapply for admission after deportation.

In 1976, appellant was convicted and imprisoned for child molesting and unlawful intercourse. In July, 1979, the INS deported appellant to Panama under the outstanding 1971 deportation. Appellant returned to the United States without

permission. In July, 1983, a grand jury indictment charged that appellant on February 13, 1980 was found in the U.S. after deportation in violation of 8 U.S.C. 1326.

Appellant moved to dismiss the indictment alleging that he was denied due process during the 1971 deportation hearing because the Special Inquiry Officer failed to inform him of all available alternatives to deportation. The district court rejected this assertion, finding that there were no deficiencies in the 1971 hearing and that, in any event, none of the alleged deficiences prejudiced appellant.

The district court convicted appellant on stipulated facts, sentenced him to 2 years of imprisonment, and fined him one thousand dollars.

CONTENTIONS

Appellant seeks to reverse his conviction on the ground that during the 1971 hearing the Special Inquiry Officer violated appellant's due process rights. Specifically, he contends that the Special Inquiry Officer should have told him that he might be eligible for a waiver of excludability, and that if he chose to depart voluntarily, he would need the Attorney General's permission to reapply for admission into the United States. Appellant does not otherwise challenge the INS's authority to deport him in 1979 by reason of the 1971 deportation order. Nor does he suggest that the 1975 permission to reapply made it unnecessary for him to obtain permission to reenter after his 1979 deportatbn. Therefore, the only issue is whether the 1971 deportation hearing violated appellant's due process rights. The Government (appellee) contends that

the Special Inquiry Officer was not required to inform appellant of the availability of a waiver of excludability; that he knew about the waivers because he already had applied for an immigrant visa as a preliminary step to a waiver of excludability, and that the INS regulations do not require the Special Inquiry Officer to inform an alien that, if deported, the alien must obtain the Attorney General's permission to apply for reentry. The government contends that the failure to inform appellant of available alternatives did not prejudice him.

Discussion

Due process violations raise issues of law which we review de novo. U.S. v. McConney, 728 F.2d 1195, 1203 (9th Cir.) (en banc), cert. denied, 105 S.Ct. 101(84).

The INS regulations which governed

appellant's 1971 deportation hearing required the Special Inquiry Officer to notify an alien of his or her "apparent eligibility" to apply for certain benefits, namely suspension of deportation, adjustment of status, or creation of a record of lawful admission. 8 C.F.R., Section 242.17 (a) (1970). A 1973 change in the regulations requires the Special Inquiry officer to discuss waivers of excludability, but only in conjunction with the particular relief for which an alien is "apparently eligible." 8 C.F.R. 242.17(a) (1973).

Appellant does not assert that he was eligible for suspension of deportation, adjustment of status, or creation of a record of lawful admission. Even under the revised 1973 regulations, the special inquiry officer did not violate any notice requirements when he failed to discuss waivers of excludability. See

U.S. vs. Barraza-Leon, 575 F.2d 218, 221-22 (9th Cir. 1978).

The regulations did not require the Special Inquiry Officer to inform appellant that he would need the Attorney General's permission to reapply for admission. In U. S. vs. Palmer, 458 F.2d 663, 665 (9th Cir. 1972), we held that guilt under 8 U.S.C., Section 1326 does not depend upon a showing that the defendant knew he could not legally re-enter the United States without permission. There is no requirement that appellant be informed at the 1971 deporattion hearing of his eligibility for a waiver of excludability or of the need for the Attorney General's permission to apply for reentry.

Appellant must show prejudice in order to prove a denial of due process. U.S. vs. Calles-Pineda, 627 F.2d 976, 977 (9th Cir.

1980). We find no prejudice here. Appellant does not contend that he was unaware at the deportation hearing of the availability of a waiver, and pursuant to an application he filed in November, 1972, he did obtain a waiver. Nor does appellant contend that if fht Special Inquiry officer had told him that he needed permission to re-enter, that he would not have re-entered the U.S. without the Attorney's General's consent. In 1963, he was convicted for violation of the same law. This show that he knew he needed the Attorney General's permission to reapply for admission. Appellant was not deprived of any due process rights and he suffered no prejudice from the Special Inquiry Officer's failure to inform him of his rights under the immigration laws.

AFFIRMED.

Hearing in Deportation Proceedings, Los Angeles, Respondent Henry Herier Darcheriel, being held on 12/6/71. SIO, Benjamin G. Myron; Trial Attorney, Howell, Language is English.

SIO Mr. Darcheriel, do you speak and understand English, do you not?

D. I speak and understand.

SIO: This is a hearing of deportation proceedings with the purpose of determining whether or not you are deportable from the United States. Do you understand?

D. Yes, I do.

SIO: During this proceeding, you have the right to be represented by counsel of your own choice at no expense to the government. Have you retained counsel to represent you at this hearing? In other words, do you have a lawyer or somebody

else to represent you at this hearing?

D. Ah, I don't have one.

SIO: Are you willing to proceed with your hearing at this time without counsel?

D. Well...I definite...I agree about this, which I have an understanding that's so complicated to me that ah, I don't know which step to take, ah, ah, I like to have the, the best way out which, ..ah, I like to..I'm kind real worried about my family which if anything else, I'm the sole support. I'm just crazy about my family.

SIO: Well, Mr. Darcheriel, all I can tell you is that if you want to get a lawyer or somebody to represent you, I can adjorn the hearing for that purpose. If you want to proceed with your hearing now

without representation, you may do so. The decision has to be made by you.

D. Ah, well, its a...The hearing is at the same time that you said it would be a month...proceeding?

SIO: Well, you're talking about something else now. All I want to know now is do you want to go ahead with the hearing now without a lawyer, or do you want time to get a lawyer?

D. No, I'll go ahead without the lawyer.

SIO: All right, fine. .....

SIO: Would you please rise and raise your hand. (Defendant was sworn)

SIO: I show you an order to show cause issued on November 24, 1971 concerning Henry Herier Darcheriel. Does this document relate to you?

D. It did.

SIO: The OSC which is marked in evidence as Exhibit No. 1 states as follows: 1. You are not a citizen or national of the United States. Is that true?

D. Yes, that is.

.....

SIO: You were deported from the U.S. at Los Angeles, California on July 28, 1967. Is that true?

D. Yes, Yes, it is, yeah.

SIO: It is charged that you are deportable under section 231(a) of the Immigration and Nationality Act, in that at the time of entering you were within one or more of the classes of aliens excludable by by the law... In other words, the charge is that you are now deportable....Do you understand the charge?

D. Yeah, I do.

SIO: Do you admit the charge?

D. I do admit.

SIO: If your deportation from the U.S. should be directed, to which country would you want to be sent?

D. Back to Panama.

SIO: Are you married now?

D. I do. I am.....

SIO: The record will show that the respondent has presented a marriage certificate showing marriage on November 3, 1970, at Los Angeles between Henry Herier Darcheriel and Lee Fountaine Taylor. I return the certificate. Of what country is your wife a citizen?

SIO: She was born in the United States?

D. California, United States, California.

SIO; Are there any children of the marriage?

D. Sure, yeah. We have one baby girl.

SIO: How old is the child?

D. The child is one year, 4 months.

SIO: Was the child born in Los Angeles?

D. Born in Los Angeles.

SIO: You have handed me a notice dated September 14, 1971, advising that a visa petition filed by your wife in your behalf had been approved on that date granting to you the status as immediate relative under section 201(b) of the I & N Act and also certificate showing the birth of your wife on 2/20/51 at Los Angeles, Calif. I return these documents to you.....

.....

SIO: If you are found deportable, the only relief that will be available to you in this proceeding would be to give you permission to depart

voluntarily instead of being deported.

Do you desire to apply for that relief?

D. I would .....

.....

SIO: I hand you herewith a written copy of my summary decision in your case. In that decision, I have found you to be deportable on the charge contained in the OSC, but I have granted your application for the privilege of voluntary departure, directing that such departure take place on or before 2/6/72, or any extension beyond that date.....Do you understand my decision?

D. I understand it.

SIO: Do you desire to take an appeal?

D. No, I don't desire to. .....

SIO: Since no appeal will be taken, my decision is now final.

APPLICATION FOR WAIVER INS

OF GROUNDS OF EXCLUDABILITY Canada

3/21/74

1.Darcheriel, Henry Herier A10 846 001

2.....

3.....

7. 12/20/62 Burglary Sec. 459 PC

8. Deported 12/29/62, 7/19/63 & 7/28/67

.....

/s/ Henry Darcheriel 11/15/72

Signature of Person Preparing Form

/s/ J. E. C. 416 S. Spring St

L.A., Calif. 11/15/72

Form I-604

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization

Service 6/16/75

In re: Henry Herier DARCHERIEL

Waiver of Excludability under I & N Act

Birth	Nationality	Dates of Deportation
1/3/24	Panama	12/29/62, 7/19/63, 7/28/67

Specific Offenses:

Burglary in L.A., Ca. 5/14/62, placed on probation 5 yrs. Burglary 2nd degree in L.A. Ca., 1/14/66, probation revoked, sentenced 6 months to 15 yrs.

Applicant arrested 8/9/72 and charged with incest & on motion case dismissed.

ORDER: It is ordered that application for waiver of excludability... is hereby granted.....

I-607

/s/
I & N Inspector in Charge